

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Appellant,

v.

DALLAS W. COX,

Respondents.

DOCKET NUMBER WD71631

Date: November 2, 2010

Appeal from:
Buchanan County Circuit Court
The Honorable Daniel Fred Kellogg, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C.Howard and Alok Ahuja, Judges

Attorneys:
Terrence M. Messonnier, Esq., Jefferson City, MO, for appellant.
Eric E. Vernon, Esq. and Gharles K. Baldwin, Esq., Liberty, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

DALLAS W. COX,

Appellant,

Respondents.

WD71631

Buchanan County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Alok Ahuja, Judges

On October 6, 2008, Stephen Akin, a resident of St. Joseph, was assaulted. The next day Akin informed the St. Joseph Police Department that the perpetrators were his uncle, Kenneth Akin, and Dallas Cox, a friend of his uncle. Akin stated that Cox had kicked him in the head. On October 8, Stephen Akin was hospitalized for injuries related to the assault. He died on October 13. Following an autopsy the medical examiner concluded that Akin had died as a result of blunt force trauma to his head.

On October 9, law enforcement officers interviewed and took a statement from Cox. At that time, the officers took possession of the pair of shoes Cox claimed to have been wearing at the time of the assault; the shoes were booked into evidence on October 10.

Cox was ultimately charged with second-degree felony murder. On August 19, 2009, with his trial approaching, Cox requested an opportunity to view the physical evidence and to review any reports on trace evidence. In response to Cox's request, law enforcement officers discovered that Cox's shoes, as well as evidence collected during Akin's autopsy, had all been destroyed on March 25, 2009.

Cox filed a motion to dismiss the charges against him or for sanctions based on the destruction of this evidence. After an evidentiary hearing the trial court entered a Judgment dismissing the charges on October 16, 2009. The court's Judgment concluded that the officer who actually destroyed the evidence "had no direct knowledge of the relative value of the evidence," and that the investigating officers, who were aware of the evidence's potential value, "were not a party to the destruction" and would not have authorized it. The court nevertheless concluded that the investigating officers' knowledge of the evidence's potential significance had to be imputed to the officer destroying the evidence, and that the destruction was therefore in bad faith, justifying dismissal.

The State appeals.

REVERSED AND REMANDED.

Division Two holds:

The trial court dismissed the charges against Cox based solely on an alleged violation of the federal Due Process Clause. Under that constitutional provision, where evidence only has a *potential* exculpatory value, a defendant must show that the State acted in "bad faith" in destroying the evidence to justify the dismissal of a criminal prosecution. In this context, "bad faith" requires that the State have acted for the purpose of depriving the defendant of exculpatory evidence.

Here, while the destroyed evidence would have had central importance in the trial of the charges against Cox, because it was not tested, the most that can be said is that the evidence was *potentially* exculpatory. For example, if testing of the shoes had revealed trace evidence associated with Akin, this would have inculpated Cox; on the other hand, if testing revealed no such trace evidence, that fact would have supported Cox's defense.

Because the evidence at issue here was only *potentially* exculpatory, Cox was required to demonstrate that the evidence was destroyed in bad faith. However, by finding that the knowledgeable investigating officers played no role in the destruction, that they would not have authorized it, and that the officer who actually destroyed the evidence had no knowledge of its significance, the trial court's findings foreclose any determination of bad faith in this case. In order to act with the purpose of depriving the defendant of exculpatory evidence, the individuals destroying that evidence must, at a minimum, have some knowledge that evidence is important to a pending criminal prosecution. Imputing the investigating officers' knowledge of the evidence's importance to the destroying officer cannot supply bad faith, because neither the investigating officers nor the destroying officer had the purpose of depriving Cox of potentially useful evidence.

The dismissal of the charges against Cox is reversed, and the case is remanded for further proceedings.

Opinion by: Alok Ahuja, Judge

November 2, 2010

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